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Report of the Commission of Inquiry on Burundi*

Summary

The Commission of Inquiry on Burundi found that the serious human rights violations documented in the first year of its mandate, including crimes against humanity, have persisted in 2017 and 2018. Such violations include cases of summary execution, enforced disappearance, arbitrary arrest and detention, torture and other cruel, inhuman or degrading treatment, sexual violence, and violations of civil liberties such as the freedoms of expression, association, assembly and movement (see A/HRC/36/54 and A/HRC/36/54/Corr.1).

While the State entities that are most often implicated in these violations continue to be the National Intelligence Service and the police, the Commission is concerned about the growing role being played by members of the ruling party's youth league, the Imbonerakure, in a situation in which recruitment drives among the general public are being used as a means of suppressing all opposition. The perpetrators of the violations are operating in a climate of impunity perpetuated by the lack of an independent judiciary.

The political crisis in Burundi has had a very negative impact on the country's economic and social situation and has fuelled an increase in poverty. The Government has nonetheless imposed additional taxes and contributions, in contravention of the right of all persons to an adequate standard of living, and has failed to devote the greatest possible share of its domestic resources to the realization of economic and social rights.

* The annexes to the present document are being circulated as received, in the language of submission only.

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Contents

		Page
I.	Introduction	3
	A. Mandate	3
	B. Cooperation by Burundi with the Commission	3
	C. Methodology	3
	D. Applicable law	4
II.	Human rights situation	4
	A. Main trends	4
	B. Responsibility	5
	C. Violations of civil and political rights	8
	D. Violations of economic and social rights	12
	E. Dysfunction in the judicial system	13
III.	International crimes	14
	A. Constituent elements and types of crimes	14
	B. Individual responsibility	15
IV.	Measures to protect civilians and prevent the recurrence of conflict	15
V.	Conclusions and recommendations	16
Annexes		21
I.	Map of Burundi	21
II.	Correspondence with the Government of Burundi	22

I. Introduction

A. Mandate

1. The Commission of Inquiry on Burundi was created by Human Rights Council resolution 33/24, adopted on 30 September 2016, to conduct a thorough investigation into human rights violations and abuses in Burundi since April 2015, to determine whether any of them may constitute international crimes, to identify their alleged perpetrators and to formulate recommendations for ensuring that such perpetrators "are held accountable for their acts". By its resolution 36/19, adopted on 29 September 2017, the Council extended the Commission's mandate without modification for one year.

2. In 2018, the Commission placed special emphasis on the violations and abuses committed since 2017 in order to highlight developments in the situation as compared to the one prevailing in 2015 and 2016. The Commission also focused more closely on economic and social rights and the functioning of the judicial system.

3. On 1 February 2018, Mr. Doudou Diène of Senegal was appointed to chair the Commission following the resignation of the previous Chair, Mr. Fatsah Ouguergouz. On 5 March 2018, Ms. Lucy Asuagbor of Cameroon was appointed to serve as a member of the Commission to replace Ms. Reine Alapini Gansou, who was elected to the International Criminal Court. Ms. Françoise Hampson of the United Kingdom of Great Britain and Northern Ireland continued to serve as a member of the Commission, as she has done since its inception.

4. The Commission presented two oral briefings to the Human Rights Council, at the Council's thirty-seventh and thirty-eighth sessions. The present report summarizes the final conclusions of its investigations, which will be detailed in a separate document.[1]

B. Cooperation by Burundi with the Commission

5. By its resolution 36/19, the Human Rights Council urged the Government of Burundi to cooperate fully with the Commission of Inquiry, to authorize it to conduct visits to the country and to provide it with all the information necessary to fulfil its mandate. To this end, the Commission sent six letters to the Permanent Mission of Burundi in Geneva and one letter to the Minister for Foreign Affairs and International Cooperation (annex II). It called on the Burundian authorities, including during its oral briefings to the Human Rights Council, to grant it access to Burundi and to share information on the human rights situation in the country, including information concerning attacks on agents of the State and members of the ruling party. As in the past, these requests have gone unanswered. The Burundian authorities have consistently disputed the content of the Commission's briefings and reports and have taken a hostile attitude towards the Commission, threatening twice to take legal action against its members. The United Nations High Commissioner for Human Rights has condemned this threat as being contrary to the 1946 Convention on the Privileges and Immunities of the United Nations.

C. Methodology

6. During the current mandate period, the Commission visited Belgium, Uganda, the Democratic Republic of the Congo, Rwanda and the United Republic of Tanzania. It also conducted a mission to Ethiopia to meet with representatives of the African Union. Through these visits and numerous remote contacts, in particular with individuals living in Burundi, the Commission conducted more than 400 interviews with victims, witnesses and

[1] That document (A/HRC/39/CRP.1) will be available shortly on the website of the Human Rights Council and the Commission of Inquiry on Burundi (www.ohchr.org/EN/HRBodies/HRC/IBurundi/Pages/ColBurundi.aspx).

other sources. These are in addition to the 500 interviews conducted and the testimonies gathered during its initial mandate period.

7. As it had done for its previous report (A/HRC/36/54 and A/HRC/36/54/Corr.1), the Commission adopted the same standard of proof as most other commissions of inquiry on human rights, namely "reasonable grounds to believe". It therefore took care to collect a body of reliable and consistent information on the basis of which a reasonable and ordinarily prudent person would have reason to believe that an incident or pattern of conduct had occurred.

D. Applicable law

8. The law applicable to the work of the Commission, namely international human rights law and international criminal law, has also remained the same (see A/HRC/36/54, paras. 9 and 10). Over the past year, there have been no new developments pointing to the existence of an armed conflict to which the rules of international humanitarian law would apply. Having decided to place greater emphasis on economic and social rights, the Commission based its legal analyses on the relevant instruments to which Burundi is a party.[2]

9. Burundi remains a party to the Convention on the Prevention and Punishment of the Crime of Genocide, but it ceased to be a party to the Rome Statute of the International Criminal Court on 27 October 2017. The country's withdrawal from the Rome Statute does not, however, discharge it from the obligations arising therefrom while it was a party to this treaty.[3] Accordingly, on 25 October 2017, Pre-Trial Chamber III of the International Criminal Court authorized the Prosecutor of the Court to open an investigation into crimes committed in Burundi between 26 April 2015 and 26 October 2017. The Commission has continued to refer to the definitions of crimes provided by the Rome Statute, which are reflected in the Criminal Code of Burundi.

II. Human rights situation

A. Main trends

10. The Commission found that the main human rights violations documented since the political crisis began in April 2015, namely cases of summary execution, disappearance and enforced disappearance, arbitrary arrest and detention, torture and ill-treatment, and sexual violence, have persisted in 2017 and 2018. As in the past, most of the victims of these violations are opponents of the Government and/or of the ruling party (the Conseil national pour la défense de la démocratie-Forces pour la défense de la démocratie (CNDD-FDD)) or persons who are perceived as such, including members of opposition political parties (particularly the Forces nationales de libération, led by Agathon Rwasa, and the Mouvement pour la solidarité et la démocratie); supporters of armed opposition groups; Burundians trying to flee the country and therefore suspected of joining such groups; or journalists or members of civil society organizations.

11. The violations have had lasting psychological and physical effects on the victims. Those that have been committed primarily against men, including enforced disappearance and summary execution, have had multiple consequences for the victims' families. In addition to the impact of losing a spouse, wives often face harassment, threats or violence on the part of the alleged perpetrators and are unable to meet the basic needs of their families.

12. Before and during the campaign to amend the Constitution, CNDD-FDD and its youth league, the Imbonerakure, stepped up their efforts to recruit members from among

[2] See A/HRC/39/CRP.1.

[3] Rome Statute, art. 127.

the general public. These efforts focused in particular on Burundians — even those who were apolitical — who had refused or been unable to register to vote and on those who had not paid their contribution for the 2020 elections. These trends are further limiting freedom of expression in a country whose main independent media outlets and human rights organizations have been banned. Those that continue to operate in the country have been subjected to restrictions, threats and persecution.

13. This climate of disregard for human rights continues to be fomented by repeated instances in which hatred and violence have been advocated by the authorities, including the Head of State and members of CNDD-FDD, and by an overall context of impunity exacerbated by the lack of an independent and properly functioning judicial system, as well as a lack of public trust in the latter. This environment has also had a direct impact on the enjoyment of economic and social rights, given that a growing share of the population has unmet needs, primarily in the areas of health, nutrition, water, hygiene and sanitation, as a result of increased financial pressure from the authorities and CNDD-FDD. Whereas Burundi was formerly a developing country, it is now once again in a state of humanitarian emergency. In some cases Burundians are deprived of their rights, such as the right to education, for political reasons.

14. The number of Burundian refugees increased steadily until 31 March 2018, reaching nearly 431,000; it then began to decline. The number today is estimated at 394,778, accounting for 3.7 per cent of the Burundian population.[4] The Commission met with persons recently granted refugee status who reported that checkpoints, in particular those set up by Imbonerakure, have been stepped up at the country's borders. In some cases, human rights violations have been committed against individuals who were trying to flee or who had returned to Burundi. Some of these persons have gone back into exile without necessarily being registered in the host country.

B. Responsibility

1. Responsibility of the Burundian State

15. States have a threefold obligation to respect, protect and fulfil human rights, including both civil and political rights and economic and social rights.

(a) Obligation to respect

16. The obligation to respect human rights requires States, their agents and persons acting under their control to refrain from actively violating the rights of individuals.

(i) Responsibility of the State for the conduct of its organs

17. The Commission found that members of the National Intelligence Service and the police, including high-ranking officials, were involved in the commission of a large number of human rights violations in 2017 and 2018. Administrative authorities have also committed or ordered the commission of human rights violations, including arbitrary arrest and detention and ill-treatment.

18. New testimonies, including from former State and security officials, have confirmed the central role being played by an informal structure surrounding the Head of State, often referred to as the "committee of generals", that includes State officials such as the Minister of Public Security, the Administrator-General of the National Intelligence Service, the heads of the President's civil cabinet and office of police affairs, and the Secretary-General of CNDD-FDD. This structure sets the policy on political and security issues, including the measures to be taken in relation to opponents. It transmits its orders and directives through a parallel hierarchy and chains of command based on a network of personal loyalties, some of which date back to the time of the rebellion, whose composition varies from one province or locality to another. The workings of this structure always involve more or less

[4] Office of the United Nations High Commissioner for Refugees, 30 June 2018. See https://data2.unhcr.org/en/situations/burundi.

high-ranking officials of the National Intelligence Service, the police, the army, the administration and CNDD-FDD. In this regard, organs of the State are often indistinguishable from organs of the ruling party.

19. The Government has imposed additional taxes and contributions, including for the 2020 elections (see para. 57), and has thereby exacerbated poverty and violated the obligation of the State to take appropriate measures to ensure that all persons have an adequate standard of living for themselves and their families.[5] Discrimination by State agents based on whether or not individuals belong to CNDD-FDD has had an impact on specific rights, such as the right to education, and on employment in the civil service and in public and public-private enterprises.

(ii) Responsibility of the State for the conduct of the Imbonerakure

20. The information gathered, in particular from former members of the Imbonerakure and CNDD-FDD, confirms that the role of the Imbonerakure is growing in an overall context of recruitment among the general public and persecution of political opponents and persons perceived as such. The referendum campaign has given rise to numerous violations by Imbonerakure, who, acting either alone or in the presence of law enforcement officers, conduct checks to verify whether persons of voting age have registered and whether they have paid their contributions for the 2020 elections. These checks have often served as a pretext for extortion and theft. Forced recruitment into the Imbonerakure has also reportedly been stepped up.

21. The increase in these activities and the wider latitude being left to the Imbonerakure demonstrate their collusion with formal and informal structures of State repression (see para. 18). The fact that the Imbonerakure are members of the "joint human security committees", along with representatives of the administration and the police, indicates that they are acknowledged to play a role in the security apparatus. With the consent of local governments, Imbonerakure have been used as auxiliaries or substitutes for law enforcement in the country's interior, where such forces have a reduced presence. Some testimonies have even indicated that police operations against opponents have been led by Imbonerakure.

22. The Commission is thus in a position to establish the responsibility of the Burundian State for wrongful acts committed by Imbonerakure in four contexts: when their conduct is acknowledged and adopted by agents of the State,[6] when they act on the instructions or under the direction of the latter,[7] and when they act in "complete dependence" on or under the "effective control" of such agents.

23. Imbonerakure have continued to make arrests on their own initiative, often with violence, and to hand over the persons apprehended to the police or the National Intelligence Service. The detention of such persons by law enforcement shows that the latter have adopted the conduct of such Imbonerakure. This acknowledgement is also demonstrated by the fact that no measures have been taken to put a stop to such conduct.

24. Imbonerakure have continued to act on the orders of officials, including high-ranking officials, of the National Intelligence Service, the police and the Office of the President. Some have taken part in law enforcement operations or operations against opponents, acting alongside police or intelligence officers and in some cases wearing the same uniforms or carrying the same weapons as the defence and security forces. Such conduct by Imbonerakure has even taken place in prisons, such as the Mpimba prison in Bujumbura, and in police holding cells.

25. The growing role and freedom of action of the Imbonerakure are entirely dependent on the discretion of State power structures and on the impunity accorded by the latter. To demonstrate the "complete dependence" of an organization on the State, international

[5] International Covenant on Economic, Social and Cultural Rights, art. 11.

[6] International Law Commission, articles on responsibility of States for internationally wrongful acts, art. 11.

[7] Ibid., art. 8.

jurisprudence nonetheless requires the existence of a particularly great degree of control, as shown, for example, by the provision of considerable military and financial support and systematic alignment with State policy.[8] In this connection, witness statements confirm that a group of demobilized soldiers, subsequently joined by Imbonerakure, was created in 2006 and has since been trained, armed and remunerated by the former Administrator-General of the National Intelligence Service. Following the killing of that official in 2015, the group was supplemented by new members selected and used by officials of the National Intelligence Service, the police and the army to conduct operations, including summary executions and targeted disappearances. On the basis of this information, the Commission is of the view that the group is acting in complete dependence on the Burundian State.

26. The Commission remains convinced that the Imbonerakure often operate under the "effective control" of the Burundian State. International jurisprudence requires that such control be demonstrated in each case through the planning and organization of operations, the issuance of orders or the provision of equipment by the State.[9] Several witness statements attest to that level of control during operations carried out by Imbonerakure.

27. However, to date, international judges have issued rulings only in cases involving entities acting outside the territory of the State in question. In such cases, the State must have exercised direct control in order to be held accountable. The Imbonerakure, however, are committing wrongful acts on Burundian territory. The State thus has more means at its disposal, in particular of a legislative, judicial and financial nature, for putting an end to their activities or, on the contrary, for promoting them through its action or deliberate inaction. It is therefore in a position to exercise overall effective control over the Imbonerakure. Given that the Imbonerakure have been involved in a wide range of activities, including some within the purview of the Government; have in a number of cases acted autonomously but with a freedom of action afforded by the authorities; and have continued to enjoy near-total impunity, the Commission is of the view that the Burundian State is responsible for the wrongful acts committed by the Imbonerakure, since it exercises overall effective control. Therefore, under international law, the Burundian State may be held accountable for all of the human rights violations attributable to the Imbonerakure.

(b) Obligation to protect

28. The State has a duty to protect the human rights of persons under its jurisdiction, in particular when it knows or should have known of violations or abuses committed by third parties. By allowing its agents and/or Imbonerakure who are responsible for such acts to go unpunished, including by not conducting investigations or initiating proceedings against them, the Burundian State is failing to meet its obligation to protect. By not taking action to combat impunity and not undertaking a thorough reform of its judicial system (see paras. 62–65), the Burundian State is encouraging the repeated commission of human rights violations and abuses.

(c) Obligation to fulfil

29. Article 2 of the International Covenant on Economic, Social and Cultural Rights requires States parties to take steps to the maximum of their available resources with a view to achieving progressively the full realization of the rights recognized therein. The fact that international assistance to Burundi has decreased since 2015 as a result of violations of civil and political rights does not relieve the Burundian State of its obligation to devote the maximum of its available resources to the realization of economic and social rights. Yet the Commission has noted that the country's domestic resources are oriented more towards defence and security expenditures and that there are many exemptions. The Commission has also received information on the misappropriation and seizure of public property by

[8] International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007*.

[9] Ibid.; see also International Court of Justice, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986*.

senior officials (see para. 60) in a country that is experiencing a humanitarian crisis and in which much of the population is unable to enjoy the right to food.

2. Responsibility of armed groups and opposition political parties

30. The existence of armed groups at the border continues to pose a threat to the country's civilian population. To the Commission's knowledge, none of these groups claimed responsibility for an attack on Burundian soil in 2017 or 2018. Because the Commission has not had access to victims and the Government has repeatedly refused to hand over evidence, the Commission has been unable to corroborate the information it has received on the involvement of armed groups in human rights violations in Burundi since 2015. In particular, it has not been able to identify the group responsible for the killing of at least 24 people on 11 May 2018 in the district (*commune*) of Buganda, Province of Cibitoke. The findings of the investigation carried out by the Burundian authorities have not yet been released.

31. The Commission noted that on 3 and 5 April 2018, a call to arms via Twitter and Facebook was issued by Jérémie Minani, a member of the governing body of the National Council for the Restoration of the Arusha Peace and Reconciliation Agreement for Burundi, the Constitution and the Rule of Law, which is a platform for opposition political parties in exile. On 8 June 2018, the Civic Forum of Burundi issued a statement, signed by the President of the Council and representatives of civil society organizations in exile, calling for a "revolution" by the Burundian people. While the statement cannot be described as a clear incitement to armed conflict, the use of revolutionary language nevertheless raises the possibility of recourse to violence.

C. Violations of civil and political rights

1. Right to life

(a) Summary execution

32. While summary executions were not found to have taken place on a large scale, as occurred in 2015, several witness statements attest to the persistence of such violations, primarily against persons who belonged or were suspected of belonging to the opposition, in particular when such persons refused to join CNDD-FDD, to register to vote in the referendum or to pay contributions.

33. Most of those alleged to have perpetrated summary executions since 2017 have been members of the National Intelligence Service, the police or the Imbonerakure. Members of the Imbonerakure have acted either alone or in conjunction with the security forces, or under the supervision of the latter.

34. The practice of concealing the bodies, including by weighing them down with stones and throwing them into watercourses or by transporting them from one province or district to another in order to make them harder to identify, has persisted. It also continues to be the case that when bodies are found, they are simply buried and no investigation is conducted.

(b) Enforced disappearance

35. The phenomenon of arbitrary arrest and detention, including in secret locations, the concealment of bodies and the impunity prevailing in the country have continued to create a climate of secrecy that is conducive to cases of disappearance. This secrecy is exacerbated by the restrictions imposed on independent journalists and civil society organizations and by victims' reluctance to file complaints for fear of reprisals. According to some testimonies, individuals have disappeared following night-time raids on their homes carried out by Imbonerakure. Cases of disappearance also continue to be attributed to officers of the National Intelligence Service and the police.

36. At this stage of its investigations, the Commission has reasonable grounds to believe that Léopold Habarugira, an official of the opposition party Union pour la paix et le développement-Zigamibanga, who was arrested on 12 September 2017 by a group of

individuals including at least one person wearing a police uniform, has been a victim of enforced disappearance.[10] The same appears to be true of Mouvement pour la solidarité et la démocratie members Bonaventure Havyarimana, Égide Habonimana, Lionel Hafashimana, Bénius Mbanyenimanga and Emmanuel Nyabenda, who were arrested in Bujumbura on 2 March 2018 by officers of the National Intelligence Service. The twins Bukuru and Butoyi Shabani, who were arrested in November 2016, and Évariste Nyandwi, alias Matwi, who was arrested in December 2016, were detained in a house in Bujumbura that was used by the National Intelligence Service as a secret place of detention. It is alleged that they were subsequently executed by members of the National Intelligence Service. The Commission has also gathered information on other cases in which it has reason to fear that enforced disappearances have taken place.[11]

2. Right to liberty and security of person

37. Cases of arbitrary arrest and detention have continued to be perpetrated. Most such cases have targeted persons affiliated with opposition political parties or opposition armed groups or persons perceived as such, as well as persons who did not register to vote or who called on voters to reject the constitutional amendment. Members of the former Burundian Armed Forces ("ex-FAB") and persons trying to flee the country have also been targeted, as have persons — even those who were apolitical — who refused to join CNDD-FDD or the Imbonerakure.

38. Arrests continue to be carried out by police officers, members of the National Intelligence Service and administrative authorities. Collective arrests are sometimes made in the wake of security incidents or in the case of political opponents. Imbonerakure act in the presence of police officers and/or local authorities, or on their own initiative, before handing the arrested persons over to the police. It is clear that these acts are arbitrary because the Imbonerakure are not legally authorized to carry out arrests,[12] the victims are not informed of the reasons for their arrest and the arrests are conducted without a warrant and, in some cases, in a violent manner.

39. Signs of arbitrary detention include the absence of a legal basis or the misuse of vague descriptions such as "undermining the internal security of the State", prolonged detention without the possibility of appeal, failure to inform the detainee's relatives and lack of access to legal counsel. Relatives of persons wanted by the authorities have been detained or threatened with arrest. Some individuals have been detained in police holding cells before being taken to the National Intelligence Service or the Special Investigation Brigade. Testimonies concerning detention in unofficial places have also been obtained, as well as information on the use of police holding cells to detain Imbonerakure for internal disciplinary purposes.

40. The same arbitrariness continues to be observed with regard to release from custody. Some individuals have been released for no apparent reason, others because they knew someone within the State apparatus and still others in exchange for what have sometimes amounted to large sums of money. Some individuals who were freed upon acquittal or presidential pardon have been rearrested or subjected to death threats, or are being sought by State agents or Imbonerakure. In addition, some persons who were sentenced for political reasons have been kept in detention even after they had been exonerated or had completed the term of their sentence.

3. Torture and other cruel, inhuman or degrading treatment

41. Cases of torture and ill-treatment have persisted. While some of these acts have been committed by officers of the National Intelligence Service and the police, the majority have

[10] See the definition of "enforced disappearance" in article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance.

[11] In these cases, some but not all elements of the definition of "enforced disappearance" are present. For further details, see A/HRC/36/54, para. 38; see also A/HRC/36/CRP.1 and A/HRC/39/CRP.1.

[12] Unless the person is arrested *in flagrante delicto*.

been committed by Imbonerakure acting alone, sometimes with the assistance or in the presence of police officers.

42. Most of the victims in these cases have been young men who were, or were perceived to be, sympathizers or members of opposition political parties and who refused to join the ranks of CNDD-FDD or the Imbonerakure, or who were accused of joining armed groups when they were trying to flee the country. Persons who had refused to register to vote or who were suspected of calling on voters to reject the constitutional amendment were targeted during the referendum campaign. In some cases, women have been subjected to ill-treatment by Imbonerakure who were looking for a member of their family.

43. Most such acts of torture and ill-treatment have occurred in places of detention: police or National Intelligence Service holding cells, the Mpimba central prison in Bujumbura and unofficial places of detention such as private homes. There have also been cases in which the acts occurred in public places, such as streets or fields. Some victims were beaten or kicked on different parts of their bodies or were hit with stones, sticks, rods, metal bars or rifle butts, or were attacked with sharp objects such as machetes or knives. Some victims were burned with heated metal rods, and some were tied up or handcuffed. In a number of cases, acts of torture were accompanied by threats, including death threats, intimidation and verbal abuse, sometimes of an ethnically charged nature.

44. Several victims described conditions of detention in prisons and police cells that constitute cruel, inhuman or degrading treatment, including overcrowding in cells, unhealthy conditions and lack of food, water and medical care.

4. Sexual violence

45. The Commission documented numerous cases of sexual violence. The majority of the victims are women, targeted because they or their spouses belonged or were thought to belong to the opposition or because they refused to join the ranks of CNDD-FDD or the Imbonerakure, sometimes out of a desire to remain apolitical. Most of the perpetrators were Imbonerakure or other men who implied that they were acting on behalf of CNDD-FDD. In most of the cases, the women were raped by one or several men during attacks on their homes, which often took place at night. The rapes were often accompanied by other types of physical violence against the victims and, in some cases, against other members of the household. The perpetrators sometimes made death threats or ethnically charged remarks. These acts, especially those committed for a specific purpose such as intimidation or punishment because of the victim's assumed political affiliation, constitute acts of torture.

46. In the context of detention, men have also been victims of sexual violence, including cases of forced nudity and violence on the genital area. Such violence, which constitutes torture, has taken place inter alia in National Intelligence Service cells. Sexual violence has been perpetrated by police or National Intelligence Service officers, generally against persons suspected of belonging to or supporting armed groups.

47. The fact that the victims often have not had access to appropriate health care has exacerbated the consequences of sexual violence. Most of the victims have not filed complaints because they were afraid of being stigmatized, did not have access to justice or did not trust that effective measures would be taken against State agents or perpetrators linked to CNDD-FDD. Several women who had been victims of sexual violence said that they had informed the local authorities but that the latter had not taken any action. The persistence of multiple forms of discrimination against women in Burundi is conducive to sexual violence.

5. Civil liberties

(a) Freedom of expression

48. Most of the violations and restrictions that have been documented, particularly in the context of the referendum campaign, have curtailed the freedom of expression. With regard to the media, the National Communication Council, whose powers and subordination to the executive branch were reinforced by an organization act adopted in March 2018, has tightened its control over the media and journalists. In September 2017, the National

Communication Council revoked the licences of about a dozen media outlets, including Radio publique africaine, Radio Bonesha FM and Radio-Télévision Renaissance, all of which have been shut down since May 2015. The Council has also ordered a number of suspensions. For example, it suspended radio broadcasts by the Chamber of Commerce and Industry in October 2017 and broadcasts by the British Broadcasting Corporation (BBC)[13] and Voice of America in May 2018, and has suspended certain sections of the online newspapers *Iwacu* and *Le Renouveau*. Many independent journalists remain in exile. Others have gone into exile in 2018, and those who are still working in Burundi continue to be subjected to pressure, intimidation and restrictions on the part of local authorities, the National Intelligence Service and Imbonerakure.

49. The Commission remains concerned about the frequent instances of incitement to hostility or violence, which contravene article 20 of the International Covenant on Civil and Political Rights. In particular, certain speeches made by the Head of State — especially those of 18 November 2017, 12 December 2017 and 2 May 2018 — have threatened opponents both within and outside CNDD-FDD. These speeches were echoed across the country by local authorities and members of the ruling party. Melchiade Nzopfabarushe, a former Chef de Cabinet in the Office of the President, was convicted at first instance of having made remarks amounting to hate speech in April 2018, but his sentence was significantly reduced on appeal and he has since been released. Other individuals who have publicly made similar remarks have gone unpunished. In addition, as in previous years, some Imbonerakure continue to chant militant and hateful slogans as a show of force.

(b) Freedoms of association and assembly

50. The situation of organizations whose authorizations have been suspended or revoked and whose accounts have been frozen has not changed. The Burundian authorities have not rescinded the international arrest warrants issued against the leaders of such organizations. The two laws adopted in January 2017 on Burundian non-profit organizations and foreign non-governmental organizations have limited those entities' freedom of association by considerably strengthening the authorities' control over their activities and resources. The Commission has continued to document arbitrary arrests, prosecutions and severe sentences against members of civil society organizations still operating in Burundi, as illustrated by the April 2018 sentencing of Germain Rukuki to 32 years' imprisonment following an unfair trial.

51. While the freedom of association is hampered in Burundi, its corollary, the freedom not to associate, is also restricted. Many witnesses have reported that local officials of CNDD-FDD and/or Imbonerakure have forced or attempted to force members of opposition parties and persons with no political affiliation to join those two organizations. This situation has given rise to threats, harassment, violence and, in some cases, killings or arbitrary arrests.

52. Members of opposition parties have also been subjected to pressure and restrictions that prevent them from holding public meetings, particularly in the context of the referendum campaign. Several people reported that they had been forced to participate in local meetings of CNDD-FDD.

(c) Freedom of movement

53. The Commission has noted that three types of interference with freedom of movement have persisted: the use of "household record booklets" to keep track of population movements; checkpoints in the vicinity of the country's borders; and cases of threats and harassment against persons whose family members have left Burundi. The inspection of "household record booklets", mainly by the police, has often given rise to extortion. Checkpoints near the borders have been stepped up and such checks are often carried out by Imbonerakure, sometimes in collaboration with the police. Cases of arbitrary arrest, ill-treatment, extortion and threats at the checkpoints have been reported.

[13] BBC subsequently apologized to the Government of Burundi.

54. In 2017 and 2018, freedom of movement was also hampered by roadblocks throughout the country and checkpoints at the entrance to markets. Imbonerakure, sometimes in collaboration with local governments, turned away persons who could not show evidence that they had registered for the referendum or that they had paid contributions for the 2020 elections or other levies.

D. Violations of economic and social rights

55. Political crises in Burundi have long had a direct impact on the enjoyment of economic and social rights. The Arusha Agreement identifies the failure to satisfy the basic needs of citizens as one of the causes of violence in Burundi.[14] The crisis that broke out in 2015 was no exception. In 2016, Burundi went from a developing country to a country in a state of humanitarian emergency.[15] The United Nations Development Programme (UNDP), the International Monetary Fund (IMF) and the African Development Bank have all recorded zero or negative economic growth in Burundi since 2015. This reversal is taking place in a country where growth is structurally "low and volatile"[16] owing to a lack of diversification of the economy, which is based primarily on an agricultural sector that is dominated by subsistence activities and dependent on the vagaries of exports and weather.

56. IMF noted that the country's growth prospects for 2018 would remain weak owing to internal conflicts, political constraints and governance and security challenges, as well as high levels of public debt.[17] Such debt, which has been rising again since 2015, reflects the burden of general expenditure by the State[18] and the fact that the country's international partners have continued to suspend direct budget support and to reduce their donations significantly on account of repeated human rights violations in Burundi.

57. In response to this situation, the Government turned to domestic debt, which has "exploded"[19] since 2015, further weakening the economy. It has also introduced new taxes and duties and has increased existing ones. For example, taxes on sugar and on fuel and lubricants were raised by 33 per cent and 95 per cent, respectively, between 2015 and 2018. Added to this was the contribution "for the 2020 elections", which was established extralegally in December 2017[20] and duplicates a provision in the State's 2017 budget. This contribution, which is payable by civil servants, households and students of voting age, has in a number of cases been collected forcibly, in particular by Imbonerakure. This has led to cases of ill-treatment, arbitrary arrest and detention, threats, intimidation and persecution in the event that a person is unwilling or unable to pay.

58. These levies, together with various ad hoc contributions imposed at the local level, are impoverishing a population whose real per capita gross domestic product has shown negative growth since 2015[21] and whose share of "non-poor" households was only 20.9 per cent prior to the crisis.[22] Poverty is especially prevalent among households headed by women who are single, widowed or divorced.[23] The population's access to goods, especially essential items imported from abroad, has been hindered by the rise in exchange rates and inflation since 2015. In the space of two years, the number of people "in need",

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[14] Arusha Peace and Reconciliation Agreement for Burundi, protocol III, art. 2.

[15] United Nations humanitarian country team.

[16] UNDP, *Risques et vulnérabilités du développement humain de la République du Burundi*, Bujumbura, December 2016.

[17] IMF, *Regional Economic Outlook: Sub-Saharan Africa. Fiscal Adjustment and Economic Diversification*, Washington, D.C., October 2017.

[18] UNDP, *Risques et vulnérabilités* (see note 16).

[19] Ibid.

[20] Ordinance No. 530/540/1772.

[21] IMF, *Regional Economic Outlook* (see note 17).

[22] *Cadre stratégique de croissance et de lutte contre la pauvreté, CSLP II: 2012–2015, Bilan de mise en œuvre*, UNDP, December 2016.

[23] World Bank, *Burundi Poverty Assessment*, November 2016.

mainly in terms of health care, food, water, hygiene and sanitation, increased from 1 million to 3.6 million, representing more than 34 per cent of the population.[24]

59. Against this backdrop, the Government has not redirected its domestic resources to give priority to social spending, the demand for which has risen steadily in a country whose population of 10.5 million is likely to double by 2030.[25] On the contrary, a review of the annual State budgets shows that the amount of domestic resources devoted to defence and security expenditures has risen faster than the amounts allocated to basic services other than education. This situation has had a disproportionate impact on women because of their specific needs with regard to services, including health services, and because the lack of social services increases the burden of unpaid work borne by women within the family.[26]

60. By way of example, the budgets allocated to the National Intelligence Service, the Special Brigade for the Protection of Institutions and the Unit for the Protection of Institutions (*Appui à la protection des institutions*), some of whose members have been identified by the Commission as being among the main perpetrators of human rights violations, were increased by 12 per cent, 13.3 per cent and 47.6 per cent, respectively, between 2015 and 2018, while the domestic resources provided to the Ministry of Agriculture and Livestock were reduced by 27.4 per cent.[27] What is more, corruption and misappropriation of public funds among high-level authorities are further depleting the resources that the State should be devoting to efforts to safeguard the rights of the population, especially with respect to food and health. Hundreds of people living with AIDS are going without treatment, owing in particular to the dire shortage of certain items in several of the country's hospitals.

61. Recruitment of the population has had a direct impact on the economic and social rights of individuals, including in schools, universities and professional circles. Some teachers and students have been pressured or have been removed from their schools because they refused to join CNDD-FDD, to pay the contribution for the 2020 elections or to attend information meetings about the constitutional amendment. Others have had to leave the country. Hiring decisions in the civil service and in public-private enterprises have been dictated by whether or not the applicant belongs to CNDD-FDD. Trade unions that are not affiliated with the majority party have come under threat and have difficulty operating.

E. Dysfunction in the judicial system

62. An in-depth study of the judicial system[28] has confirmed the long-standing lack of judicial independence in Burundi, as the executive branch exercises institutional control over judges and courts through its control of the Judicial Service Commission; most courts' budgets are managed by the Government; judges are appointed and promoted in an arbitrary manner; the principle that judges should have security of tenure is absent; and judges are inadequately paid, creating a situation that is conducive to corruption. Furthermore, the judicial system in Burundi does not have enough resources to function properly, despite the recent construction and rehabilitation of courtrooms.

63. At the operational level, the Commission found examples of dysfunction in all components of the criminal justice system. The executive branch frequently issues orders and otherwise interferes with politically sensitive cases, either to protect members of CNDD-FDD and the Imbonerakure by having them acquitted or released, or to have opponents of the Government convicted and imprisoned. The use of the broadly and vaguely defined offence of "undermining the internal security of the State" to prosecute opponents has given rise to abuses. Interference by the authorities is sometimes

[24] Humanitarian country team, *Aperçu des besoins humanitaires au Burundi 2018*, November 2017.

[25] According to the World Bank, the annual population growth rate now stands at 3.1 per cent.

[26] According to the World Bank, 90 per cent of the unpaid work done in Burundi is carried out by women; see World Bank, *Burundi Poverty Assessment* (see note 23).

[27] Calculated by the Commission.

[28] See A/HRC/39/CRP.1.

accompanied by threats, including threats against the physical integrity of judges, and by reprisals against judges if they do not follow instructions.

64. In cases involving political opponents, the rights of accused persons are routinely violated at both the pretrial and the trial stages through restrictions on such persons' access to counsel or obstruction of the work of counsel. The right to a defence is also adversely affected by the misuse of the *flagrante delicto* procedure, particularly in cases involving the offence of "undermining the internal security of the State", and the absence of an institutionalized system of legal aid. The Commission also received several testimonies indicating that lawyers have been subjected to intimidation.

65. The rules of criminal procedure are rarely observed: warrantless arrests of political opponents are routinely carried out, pretrial detention is illegally extended and judges use confessions made under torture as a basis for convicting defendants, over the objections of defence counsel. Court decisions ordering the release of defendants are not always respected. The inertia of the public prosecution service in most cases of human rights violations and the reluctance of victims to seek redress, either because they have no faith in the judicial system or because they have been threatened or intimidated, are impeding the implementation of the right to an effective remedy[29] and fostering impunity.

III. International crimes

A. Constituent elements and types of crimes

66. In view of the circumstances prevailing in 2017 and 2018, in particular the persistence of human rights violations, the Commission has reasonable grounds to believe that crimes against humanity continue to be committed in Burundi. The definition of such crimes in article 7 (1) of the Rome Statute as "acts … committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack" continues to apply.

67. The attack involves the multiple commission of acts against a population consisting primarily of civilians, pursuant to a State or organizational policy.[30] In Burundi, it continues to be the case that most of the victims are civilians, who are targeted mainly by the police, the National Intelligence Service and the Imbonerakure because of their real or perceived opposition to the Government and CNDD-FDD. The policy of the State is difficult to distinguish from that of the majority party, as both are pursuing the same goal of keeping CNDD-FDD and its leadership in power. The general public is regularly reminded of the aim of this policy, as demonstrated by recent speeches made by President Nkurunziza and statements made by representatives of CNDD-FDD at all levels, particularly in the context of the referendum campaign (see para. 49).

68. The number of violations found in several provinces since 2017 and the multiplicity of victims and perpetrators demonstrate the persistence of a widespread attack directed against the civilian population. The systematic nature of the attack is also demonstrable, given the existence of "patterns of crimes" constituting a "non-accidental repetition of similar criminal conduct on a regular basis".[31]

69. The attack continues to be carried out knowingly, as the perpetrators identified by the Commission necessarily have an understanding of the context for their actions by reason of their roles in the country's political and security apparatus, as well as their indoctrination within CNDD-FDD.

70. The Commission thus has reasonable grounds to believe that the crimes against humanity which it identified previously (see A/HRC/36/54, paras. 69–74, and

[29] International Covenant on Civil and Political Rights, art. 2.

[30] Rome Statute, art. 7 (2) (a).

[31] International Criminal Court, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, decision of 30 September 2008.

A/HRC/36/54/Corr.1) continue to be committed in Burundi. These crimes include murder, imprisonment or other severe deprivation of physical liberty, torture, rape and other forms of sexual violence of comparable gravity, and persecution on political grounds. The Commission remains cautious about describing the disappearances it has documented as "enforced" within the meaning of this term under international criminal law, in view of the difficulty, at the current stage of its investigations, of proving all the elements required under the Rome Statute.[32]

B. Individual responsibility

71. The Commission has supplemented the list of alleged perpetrators of crimes against humanity that it drew up during its initial mandate period, taking care to distinguish between direct responsibility and the responsibility of military commanders and superiors. The list remains confidential, in the interest of protecting the Commission's sources and respecting the principle of presumption of innocence. It will be turned over to the High Commissioner for Human Rights at the end of the Commission's mandate. In the meantime, the Commission reserves the right to share it.

IV. Measures to protect civilians and prevent the recurrence of conflict

72. In the light of the foregoing, there is an urgent need to put an end to the human rights violations and crimes against humanity which the Commission has reasonable grounds to believe are continuing to be committed in Burundi. This imperative arises from the responsibility to protect that lies first and foremost with the Burundian State, which must take the necessary measures to ensure respect for human rights and to prosecute the perpetrators of violations and abuses. It must also cooperate with the international human rights mechanisms established by the Human Rights Council. Priority must be given to the implementation of the recommendations made in January 2018 in the framework of the third universal periodic review of Burundi and to cooperation with all special procedures and treaty bodies that examine the situation in Burundi or request to visit the country.

73. In this regard, the Commission is concerned to note that, given the suspension since October 2016 of the headquarters agreement of the Office of the United Nations High Commissioner for Human Rights (OHCHR) office in Burundi; the limited deployment of African Union observers, whose ability to operate in the country is hampered by the absence of an agreement with the Government; and the Government's recent lack of cooperation in the implementation of Human Rights Council resolution 36/2, there are now no independent international mechanisms in Burundi that are in a position to investigate human rights violations. It is important for Burundi to reconsider its decision to withdraw from the Rome Statute of the International Criminal Court and to review the composition and functioning of the Independent National Human Rights Commission to ensure that that body respects the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

74. While putting an end to human rights violations remains a short-term imperative, in the longer term it is also important to consider measures for preventing such violations. An examination of the crisis that Burundi has been experiencing since 2015 reveals the root causes, which persist to this day. The Commission has identified three main factors behind the human rights crisis in Burundi: a narrowing of democratic space, especially since the 2010 elections; the incomplete and delayed implementation of the truth, justice and security sector reform measures set out in the Arusha Agreement; and the shortage of land and resources for a steadily increasing population.[33] In this context, the struggle for power is

[32] International Criminal Court, *Elements of Crimes*, The Hague, 2011, p. 11. See also A/HRC/39/CRP.1.

[33] See A/HRC/39/CRP.1.

aimed at gaining and keeping control over these resources for the purpose of personal enrichment and to fund activities to counter all opposition.

75. It is disturbing to observe that the findings set out in 2000 in the Arusha Agreement still characterize the situation today. Article 4 of Protocol I to the Agreement describes the Burundi conflict as "fundamentally political" and as resulting from "a struggle by the political class to accede to and/or remain in power". It also identifies impunity, the lack of a sound development policy, failure to respect the principles of good governance and human rights and the "non-acceptance of peaceful coexistence, diversity and pluralism" as causes of violence and insecurity in Burundi.[34]

76. In order to prevent the recurrence of conflict in Burundi, as analysed in the Arusha Agreement, the Commission wishes to highlight a number of measures that fall within its mandate. These measures, which are outlined in the recommendations below, concern steps to safeguard civil liberties; thoroughly reform the judicial system and, in the meantime, consider establishing an independent mechanism empowered to investigate human rights violations in Burundi and to try the alleged perpetrators; reform the security sector and establish credible civilian oversight mechanisms; give priority to maximizing the allocation of resources for improving the population's enjoyment of economic and social rights; and carry out reforms, particularly in the area of landownership, to safeguard the right to development.

V. Conclusions and recommendations

77. In the light of its investigations, the Commission of Inquiry on Burundi is in a position to conclude that the serious human rights violations documented in the first year of its mandate, including crimes against humanity, have persisted in 2017 and 2018. Such violations include cases of summary execution, disappearance (including enforced disappearance), arbitrary arrest and detention, torture and other cruel, inhuman or degrading treatment, sexual violence, and violations of civil liberties such as the freedoms of expression, association, assembly and movement (see A/HRC/36/54).

78. While the State entities that are most often implicated in these violations continue to be the National Intelligence Service and the police, the Commission is concerned about the growing role being played by the Imbonerakure in a situation in which recruitment drives among the general public are being used as a means of suppressing all opposition. The Burundian State is responsible for the violations committed by Imbonerakure in this context.

79. Perpetrators of violations are operating in an overall climate of impunity. The Commission has found that, as matters stand, the Burundian judicial system is both unwilling and unable to identify and prosecute those responsible for violations.

80. The political crisis in Burundi has had a very negative impact on the country's economic and social situation and has fuelled an increase in poverty. The Government has nonetheless imposed additional taxes and contributions, in contravention of the right of all persons to an adequate standard of living, and has failed to devote the greatest possible share of its domestic resources to the realization of economic and social rights.

81. In this context, the Commission continues to believe that the Arusha Agreement must remain the basis for any settlement of the crisis in Burundi. The Commission is especially concerned to note that there are no independent international mechanisms in Burundi that are in a position to investigate human rights violations.

82. As the Government of Burundi has not yet implemented the recommendations put forward by the Commission in its previous report (A/HRC/36/54), the

[34] Arusha Peace and Reconciliation Agreement for Burundi, protocol III, art. 2.

Commission reiterates those recommendations, in particular the ones contained in paragraphs 86, 87, 111, 112, 113, 114 and 115.

83. The Commission recommends that the Human Rights Council extend the mandate of the Commission for a period of one year, in view of:

(a) The persistence of serious human rights violations and abuses;

(b) The lack of action against perpetrators, especially the Imbonerakure, some members of which have continued to be used by State agents for activities contrary to human rights;

(c) The lack of other international mechanisms in a position to carry out independent and thorough investigations into the human rights situation in Burundi.

84. The Commission also recommends that the Human Rights Council submit the report and recommendations of the Commission to the United Nations Security Council for its consideration.

85. The Commission recommends that the Government of Burundi take the following measures as a matter of priority:

(a) Put an immediate end to the gross human rights violations being committed by agents of the State and Imbonerakure;

(b) With the support of the international community, establish ad hoc mechanisms with a mandate to investigate human rights violations and to prosecute perpetrators of international crimes that are not being investigated by the International Criminal Court;

(c) With the support of the international community, establish an independent body with a mandate to investigate the cases of disappearance reported since April 2015, locate potential mass graves, and exhume and identify the remains;

(d) Take measures to ensure that victims of torture and women survivors of sexual violence have access to appropriate care, including free access to all sexual and reproductive health services and to psychological support;

(e) Implement the Guidelines on Combating Sexual Violence and its Consequences in Africa adopted by the African Commission on Human and Peoples' Rights;

(f) Control price increases, in particular by reviewing duty and tax increases that are undermining the population's right to an adequate standard of living and by abolishing contributions that disproportionately affect the poorest sectors;

(g) Cooperate with international human rights mechanisms, in particular by:

(i) Resuming the practice of allowing special procedures mandate holders to conduct missions to Burundi;

(ii) Implementing the recommendations of the universal periodic review, treaty bodies and special procedures, including by establishing a national mechanism for reporting and follow-up;

(h) Authorize the Office of the United Nations High Commissioner for Human Rights to resume all its activities in Burundi without hindrance;

(i) Sign and implement the memorandum of understanding with the African Union and permit the full deployment of the 100 human rights observers provided for therein.

86. For the medium and longer terms, the Commission also recommends that the Government of Burundi:

(a) Amend the Organization Act of 8 March 2018 amending Act No. 01/03 of 24 January 2013 on the mandate, composition, organization and functioning of the National Communication Council with a view to ensuring the latter's independence;

(b) Ratify the International Convention for the Protection of All Persons from Enforced Disappearance;

(c) Amend the Code of Criminal Procedure to align its provisions with international standards, in particular the provisions on time limits for police custody and on oversight of detention, night-time and warrantless searches, the *flagrante delicto* procedure and the offence of "undermining the internal security of the State", and provisions that grant de jure impunity to judges and to officers of the criminal investigation police (*police judiciaire*);

(d) Put an end to arbitrary detention and improve conditions of detention by:

(i) Implementing the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa adopted by the African Commission on Human and Peoples' Rights;

(ii) Ensuring that detention is subject to oversight measures for assessing its legality and compatibility with human rights;

(e) In the absence of an independent and efficient judicial system, cooperate fully with the International Criminal Court in the investigation opened on 25 October 2017;

(f) Undertake an in-depth reform of the judicial system to ensure its independence, impartiality and effectiveness, including by:

(i) Implementing the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa adopted by the African Commission on Human and Peoples' Rights;

(ii) Publishing the conclusions of the national forum on the justice system held in 2013 and convening a meeting of justice-sector stakeholders and international partners to discuss follow-up action;

(iii) Increasing the budget for the justice sector and ensuring that it is managed autonomously;

(iv) Raising the pay levels of judges in the ordinary courts and increasing the resources and facilities available to them;

(v) Computerizing court registries;

(vi) Reviewing the composition of the Judicial Service Commission to ensure that the majority of its members are appointed by their peers;

(vii) Reviewing procedures for the appointment, assignment, evaluation and promotion of judges to ensure that such procedures are not dependent on the executive branch;

(viii) Ensuring strict observance of the principle that judges should have security of tenure;

(ix) Protecting and safeguarding the independence of the judiciary by prohibiting any interference in the administration of justice by government authorities, members of the ruling party or members of the defence and security forces, and imposing penalties on anyone who influences or seeks to influence the administration of justice;

(x) Developing legal aid programmes for persons belonging to the most vulnerable groups;

(xi) **Strengthening victim and witness protection mechanisms and improving their effectiveness in order to restore public trust and encourage witnesses to come forward without fear for their safety;**

(g) **In consultation with the beneficiaries, establish a reparations programme for victims of human rights violations, ensuring that material, symbolic, individual and collective reparations are made available regardless of whether or not the perpetrators are convicted;**

(h) **Establish the State fund for victims of torture provided for by law, in conformity with general comment No. 4 on the African Charter on Human and Peoples' Rights, adopted by the African Commission on Human and Peoples' Rights, concerning the right to redress for victims of torture and other cruel, inhuman or degrading punishment or treatment (art. 5);**

(i) **Establish a compensation fund for victims of arbitrary and unlawful detention;**

(j) **Reform the security sector by:**

(i) **Ensuring that outsiders are not involved in defence or security activities;**

(ii) **Clearly defining the roles of the various defence and security forces, in particular the National Intelligence Service;**

(iii) **Suspending members of the defence and security forces who are suspected of involvement in human rights violations until the relevant investigations and judicial proceedings have concluded;**

(iv) **Establishing rigorous and transparent selection procedures that include vetting mechanisms;**

(v) **Strengthening democratic civilian control over the defence and security forces, in particular the National Intelligence Service;**

(k) **Meet its international obligations to respect, protect and fulfil economic and social rights by:**

(i) **Developing and implementing State budgets in such a way as to maximize the use of available resources to ensure that the human rights of the sectors impoverished by the political crisis are respected, in particular the rights to food, water and health care, and to develop indicators disaggregated by factors such as gender in order to better inform its policies;**

(ii) **In consultation with population groups working in the agricultural sector, including women, undertaking reforms with the aim of better protecting women's rights and making better use of land for agriculture, and developing employment opportunities outside the agricultural sector;**

(iii) **Taking a rights-based approach to the settlement of land conflicts, including those involving persons who fled Burundi either before or after 2015;**

(iv) **Ending the inclusion of any political considerations in hiring processes for the civil service, State enterprises and public-private enterprises.**

87. **The Commission recommends that political parties and armed opposition groups refrain from engaging in any attacks on Burundian territory and from any speech calling for violence, and that they join the effort to find a lasting solution to the political crisis.**

88. **The Commission recommends that the African Union, in its efforts to find a lasting solution to the crisis in Burundi, give priority to respect for human rights and the rejection of impunity, as provided for in its Constitutive Act.**

89. The Commission recommends that the technical and financial partners of Burundi:

(a) Suspend, or maintain the suspension of, any direct budget support to the Government until such time as priority is given to the allocation of domestic resources for the fulfilment of the Sustainable Development Goals and the economic and social rights of the population, and effective measures are taken against corruption;

(b) Ensure that grants and financing provided to the Government are earmarked for projects to meet the population's needs, and ensure that such funding is managed effectively and transparently;

(c) Regularly evaluate the impact of financial sanctions on the people of Burundi.

90. The Commission recommends that the guarantors of the Arusha Agreement, in their capacity as committed proponents of a lasting peace in Burundi, continue to seek a durable solution to the political and human rights crisis that will preserve and safeguard the achievements of the Arusha Agreement.

Annexes

Annex I

Map of Burundi

Annex II

Correspondence with the Government of Burundi

1. Note verbale sent to the Permanent Mission of Burundi on 10 October 2017

United Nations Nations Unies

COMMISSION D'ENQUÊTE SUR LE BURUNDI
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Référence:
2017/COI/BRD/NV/30

La Commission d'enquête sur le Burundi présente ses compliments à la Représentation Permanente du Burundi auprès des Nations Unies à New York et souhaiterait l'informer que ses trois commissaires seront à New York du 24 au 26 octobre 2017 pour présenter leur rapport à l'Assemblée générale des Nations Unies conformément aux résolutions 33/24 et 36/19 du Conseil des droits de l'homme.

Pendant leur visite, ils souhaiteraient rencontrer Son Excellence M. Albert Shingiro, Représentant Permanent du Burundi auprès des Nations Unies à New York, afin de discuter des principales conclusions et recommandations de leur rapport.

La Commission d'enquête sur le Burundi remercie la Représentation Permanente du Burundi auprès des Nations Unies à New York de la tenir informée des disponibilités de Son Excellence M. Albert Shingiro pour une telle rencontre et saisit cette occasion pour lui renouveler les assurances de sa haute considération.

HUMAN RIGHTS UNITED NATIONS

Genève, 10 Octobre 2017

Représentation Permanente du Burundi
auprès des Nations Unies à New York
Email : burundi@un.int

2. Note verbale sent to the Permanent Mission of Burundi on 30 November 2017, transmitting a letter addressed to the Minister for Foreign Affairs and International Cooperation of Burundi

United Nations Nations Unies

COMMISSION D'ENQUÊTE SUR LE BURUNDI

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REFERENCE: 2017/COIBRD/NV/37

La Commission d'enquête sur le Burundi présente ses compliments à la Mission permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève et la prie de trouver ci-jointe, pour transmission, une lettre adressée à Son Excellence Monsieur Alain Aimé Nyamitwe, Ministre des relations extérieures et de la coopération internationale de la République du Burundi, avec copie à Son Excellence Madame Aimée Laurentine Kanyana, Ministre de la Justice et Garde des Sceaux, Son Excellence Monsieur Martin Nivyabandi, Ministre des droits humains, des affaires sociales et du genre, Son Excellence Monsieur Alain Guillaume Bunyoni, Ministre de la sécurité publique, et Son Excellence Monsieur Rénovat Tabu, Représentant permanent de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève.

La Commission d'enquête sur le Burundi saisit cette occasion pour renouveler à la Mission permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève les assurances de sa haute considération.

Genève, le 30 novembre 2017.

HUMAN RIGHTS UNITED NATIONS

Mission permanente de la République du Burundi
auprès de l'Office des Nations Unies
et des autres organisations internationales à Genève
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United Nations Nations Unies

COMMISSION D'ENQUÊTE SUR LE BURUNDI

Réf: 2017/COI/BRD/lettre/24

Genève, le 30 novembre 2017

Excellence,

Le mandat de la Commission d'enquête sur le Burundi a été renouvelé pour une année par la résolution A/HRC/RES/36/19 adoptée par le Conseil des droits de l'homme en septembre dernier. Ayant pris note des réserves exprimées par votre Gouvernement, nous réitérons néanmoins notre souhait d'établir un dialogue constructif avec les autorités burundaises.

La Commission entend continuer à remplir le mandat qui lui a été confié par le Conseil des droits de l'homme de manière indépendante et impartiale. Les enquêtes sur les atteintes aux droits de l'homme commises par les groupes armés d'opposition ou toute autre entité non-étatique font partie intégrale de ce mandat.

Dans ce contexte et dans un souci d'objectivité, nous vous réitérons notre demande, déjà exprimée par courriers en date du 6 février et du 20 mars 2017, de recevoir de la part des autorités burundaises toute information utile à la compréhension de la situation des droits de l'homme au Burundi depuis avril 2015, y compris des informations détaillées sur les atteintes aux droits de l'homme commises à l'encontre de membres du Gouvernement ou du Conseil national de défense de la démocratie – Forces pour la défense de la démocratie (CNDD-FDD), d'autorités administratives ou de membres des forces de défense et de sécurité burundaises.

Nous souhaiterions recueillir en particulier des informations sur d'éventuelles enquêtes ou poursuites judiciaires qui auraient été menées sur les atteintes suivantes : le meurtre du Général Adolphe Nshimirimana, le 2 août 2015 ; l'attaque contre le Général-major Prime Niyongabo, Chef d'État-major, le 11 septembre 2015 ; le meurtre du Lieutenant-Colonel Darius Ikurakure, le 22 mars 2016 ; l'attaque contre le Ministre des droits humains, des affaires sociales et du genre, M. Martin Nivyabandi, le 24 avril 2016 ; l'attaque à l'encontre du Conseiller en communication du Président de la République, M. Willy Nyamitwe, le 28 novembre 2016; le meurtre du Ministre de l'eau, de l'environnement, de l'aménagement du territoire et de l'urbanisme, M. Emmanuel Niyonkuru, le 1er janvier 2017, ainsi que plusieurs attaques contre

S.E.M. Alain Aimé Nyamitwe
Ministre des relations extérieures et de la coopération internationale
de la République du Burundi

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des représentants du parti CNDD-FDD et des membres de la Police Nationale Burundaise commises depuis avril 2015 à Bujumbura et dans d'autres provinces.

Lors du dialogue interactif qui s'est tenu devant le Troisième Comité de l'Assemblée générale des Nations Unies le 26 octobre dernier, le Représentant permanent du Burundi auprès des Nations Unies, M. Albert Shingiro, a fait mention de cas spécifiques qui n'auraient pas été documentés par la Commission. Nous vous saurions gré des informations que vous voudrez bien partager avec nous sur ces cas, ainsi que sur tout autre incident qui mériterait une attention particulière de la part de la Commission.

La Commission d'enquête reste disponible pour rencontrer les autorités burundaises afin d'échanger sur cette demande d'information ainsi que sur son travail.

Nous vous remercions, Excellence, de l'attention que vous voudriez bien porter à cette requête et vous prions de croire à l'expression de nos sentiments distingués.

M. Fatsah Ouguergouz

Mme Reine Alapini Gansou

Mme Françoise Hampson

Ce :

- S.E.M. Aimée Laurentine Kanyana, Ministre de la justice et Garde des sceaux de la République du Burundi
- S.E.M. Martin Nivyabandi, Ministre des droits humains, des affaires sociales et du genre de la République du Burundi
- S.E.M. Alain Guillaume Bunyoni, Ministre de la sécurité publique de la République du Burundi
- S.E.M Révovat Tabu, Représentant permanent de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève

2

3. Note verbale sent to the Permanent Mission of Burundi on 11 January 2018

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REFERENCE: 2018/COI/BRD/NV/73

La Commission d'enquête sur le Burundi présente ses compliments à la Mission permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève et souhaite l'informer que M. Dimiter Chalev est désormais le nouveau Coordinateur du Secrétariat de la Commission d'enquête sur le Burundi.

Mr. Dimiter Chalev souhaiterait rendre une visite de courtoisie à Son Excellence M. Rénovat Tabu, Représentant Permanent du Burundi à Genève, afin de s'entretenir avec lui de la poursuite du mandat de la Commission d'enquête sur le Burundi.

La Commission d'enquête sur le Burundi serait reconnaissante à la Mission permanente du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève de la tenir informée de la disponibilité de Son Excellence M. Rénovat Tabu pour une telle rencontre.

La Commission d'enquête sur le Burundi tient à adresser ses meilleurs vœux pour l'année 2018 à la Mission permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève et saisit cette occasion pour lui renouveler les assurances de sa haute considération.

Genève, le 11 janvier 2018.

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Mission permanente de la République du Burundi
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et des autres organisations internationales à Genève
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4. Letter sent to the Permanent Mission of Burundi on 2 March 2018

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Le 2 Mars 2018

REFERENCE: 2017/COI/BRD/Lettre/75

Excellence,

J'ai honneur de vous informer que, conformément à la résolution 36/19 du Conseil des droits de l'homme des Nation Unies et suite à la démission de Mr Fatsah Ouguergouz, le Président du Conseil des droits de l'homme m'a nommé Président de la Commission d'enquête sur la situation des droits de l'homme au Burundi le 1er février 2018.

A cet égard, je voudrais vous informer que la Commission place mon mandat sous le signe du dialogue inclusif et sera, en conséquence, à l'écoute de tous les secteurs impliqués dans l'amélioration de la situation des droits de l'homme au Burundi. J'espère donc que ma nomination sera de nature à ouvrir un nouveau chapitre de relations de coopération constructive entre la Commission d'enquête, les autorités Burundaises et les acteurs concernés par la situation actuelle des droits de l'homme dans votre pays. La Commission réitère, en conséquence son souhait de s'entretenir, de manière franche et objective, avec les autorités Burundaises dans votre pays et à l'extérieur, en vue de l'accomplissement objectif de mon mandat. Le recueil direct et la présentation objective de la position des autorités Burundaises et de tous les acteurs soucieux de la manifestation de la vérité historique sur les violations des droits de l'homme et atteintes à ceux-ci commis au Burundi d'avril 2015 à nos jours constituent, à cet égard, des facteurs significatifs dans la bonne réalisation du mandat de la Commission.

Son Excellence
Monsieur Rénovat Tabu
Ambassadeur extraordinaire et plénipotentiaire
Représentant permanent de la République du Burundi
auprès de l'Office des Nations Unies
et des autres organisations internationales à Genève
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Je vous réitère ma disponibilité pour un dialogue permanent et ouvert. Au cours de l'une de mes prochaines visites à Genève, je souhaiterais avoir l'honneur de vous rencontrer avec les autres membres de la Commission.

Veuillez accepter, Excellence, les assurances de ma plus haute considération.

M. Doudou Diène
Président de la Commission d'enquête sur le Burundi

5. Note verbale sent to the Permanent Mission of Burundi on 13 March 2018

NATIONS UNIES
DROITS DE L'HOMME
HAUT-COMMISSARIAT

UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
COMMISSION OF INQUIRY ON BURUNDI • COMMISSION D'ENQUETE SUR LE BURUNDI
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www.ohchr.org/EN/HRBodies/HRC/CoIBurundi • TEL: +41 22 917 9313 • FAX: +41 22 917 9008 • E-MAIL: coiburundi@ohchr.org

REFERENCE:
2018/COI/BRD/NV/78

La Commission d'enquête sur le Burundi présente ses compliments à la Mission permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève et la prie de trouver ci-jointe la présentation orale qu'elle lira ce jour devant le Conseil des droits de l'homme.

La Commission d'enquête sur le Burundi saisit cette occasion pour renouveler à la Mission permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève les assurances de sa haute considération.

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Genève, le 13 mars 2018.

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6. Note verbale sent to the Permanent Mission of Burundi on 26 June 2018

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HAUT COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
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REFERENCE: 2018/COI/BRD/NV/89

La Commission d'enquête sur le Burundi présente ses compliments à la Mission permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève et la prie de trouver ci-joint la présentation orale qu'elle lira le 27 juin 2018 devant le Conseil des droits de l'homme.

La Commission d'enquête sur le Burundi saisit cette occasion pour renouveler à la Mission permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève les assurances de sa haute considération.

HUMAN RIGHTS UNITED NATIONS

Genève, le 26 Juin 2018

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